
FIRE PREVENTION AND BUILDING SAFETY COMMISSION
Department of Homeland Security

Written Interpretation of the State Building Commissioner

Interpretation #: CEB-2020-37-GAR-12-4-9

Building or Fire Safety Law Interpreted

[675 IAC 12-4-9](#) General Administrative Rules, Maintenance of buildings and structures.

Sec. 9. (a) All buildings and structures, and any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion systems, and all parts thereof, shall be maintained in conformance with the applicable rules of the commission, or applicable rules of its predecessor agencies, in effect when constructed, installed, or altered.

(b) The requirements of subsection (a) shall not prohibit maintenance in conformance with the current applicable building rules of the commission or in another manner which would be at least as safe, sanitary, energy conserving and accessible to persons with a physical disability as that required by subsection (a).

(c) Buildings and structures, and any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems, and all parts thereof, constructed, installed, or altered prior to the adoption of applicable rules by the commission or its predecessor agencies (including construction, installation, or alteration prior to the creation of the predecessor agencies) shall be maintained in a condition at least as safe and sanitary as they were when constructed, installed, or altered.

(d) This section does not prohibit the removal of buildings, structures, or any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems, or components thereof not required for the current use and occupancy by the rules of the commission or its predecessor agencies at the time of construction, installation, or alteration (including construction, installation, or alteration prior to the creation of the predecessor agencies).

(e) Notwithstanding subsection (d), no alteration or removal shall cause an existing building, structure, or any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems to become unsafe or overloaded under the provisions of the current rules of the commission for new construction.

(f) Notwithstanding subsection (d), no alteration or removal shall reduce existing fire protection or detection systems or exit capacities to a level less than that required under the provisions of the current rules of the commission for new construction.

Issue

Whether [675 IAC 12-4-9](#) requires, in a building undergoing alteration, the continuation of a fire-resistance rating on an occupancy separation that was required by the adopted codes in effect when the structure was originally constructed, but which is no longer required by the adopted codes in effect at the time the structure undergoes the alteration work.

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[675 IAC 12-4-9](#) does *not* require, in a building undergoing alteration, the continuation of a fire-resistance rating on an occupancy separation that was required by the adopted codes in effect when the structure was originally constructed, but which is no longer required by the adopted codes in effect at the time the structure undergoes the alteration work.

Rationale

When a building or structure undergoes alteration work, and the requirements of the adopted codes have changed in the time between the original construction (or the time the structure last changed occupancy group or subgroup), the alteration work is required to comply with the adopted codes in effect at the time of the alteration work:

1. [675 IAC 12-4-9](#) contains rules specific to (and limited to) maintenance work on existing structures. There is a separate rule, [675 IAC 12-4-12](#), that includes regulations related to alteration work on existing structures. As such, there is an immediate question as to applicability of [675 IAC 12-4-9](#) on any project that consists of

alteration work other than any that is performed as part of building maintenance. Nevertheless, even the maintenance rules of [675 IAC 12-4-9](#) allow conformance with the current codes:

- While subsection (a) states that the structure shall be maintained in compliance with the rules in effect at the time the building was constructed or last altered, subsection (b) states that subsection (a) shall not prohibit maintenance in conformance with the currently adopted building codes, or maintenance in a manner at least as safe as required under subsection (a). While some might think that elimination of a formerly required fire-resistance-rated occupancy separation assembly is less safe, it must be remembered that the change is the result of a code change in newer editions. This could only be construed as a "less safe" condition if newer editions of the codes incrementally decrease the level of public safety in buildings, when in fact, the nature of code development is to move toward more safe structures. As part of that process, some regulations formerly thought to be necessary to public safety may be found to be unnecessary due to other changes in construction technology and regulatory concepts.

- Subsection (c) states that buildings that were constructed prior to the adoption of rules by the Commission or its predecessor agencies must be maintained in at least as safe a condition as when they were constructed or last altered. Even if this were a maintenance project, the structure at the center of this dispute was not built prior to the adoption of applicable rules.

- Subsections (e) and (f) contain similar statements as subsection (b) in allowing work to conform to the currently adopted codes, though in reference to specific building systems, and specifically for alterations and removals done as part of building maintenance.

2. [675 IAC 12-4-12](#) deals specifically with additions and alterations to existing buildings, and in its opening subsection, and again throughout the rule, it states that the currently adopted codes are the standards which must be met for the construction.

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